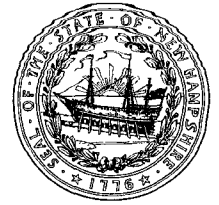




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Begin Homes, LLC
Will Begin
P.O. Box 473
Warner, NH 03278

William D. Holmes
P.O. Box 13
Barnstead, NH 03218

Re: Wetlands Bureau File # 2006-1034
Route 114, Sutton, NH

ADMINISTRATIVE ORDER
No. WD 06-038

August 17, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Begin Homes, LLC. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, New Hampshire.
2. Begin Homes, LLC is a limited liability company having a mailing address of PO Box 404, Andover, New Hampshire 03216. Will Begin is the managing member.
3. William D. Holmes is an individual with a mailing address of P.O. Box 13, Barnstead, New Hampshire.
4. Begin Homes, LLC and William D. Holmes are hereinafter collectively referred to as "the Responsible Parties."

C. STATEMENT OF FACTS AND LAW

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Env-Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."

4. Begin Homes, LLC is the owner of land located on Route 114, Sutton, NH, more particularly described on Town of Sutton Tax Map 6 as Lot 193 and Lot 122. ("the Property").
5. On May 16, 2005, the Town of Sutton signed the NH Department of Revenue Notice of Intent to Cut Wood or Timber for the Property ("the Notice"). The Notice lists Begin Homes, LLC as the property owner and William D. Holmes as the logger responsible for cutting and for following applicable timber harvest laws.
6. On July 15, 2005, the Sutton Conservation Commission telephoned DES with concerns that wetlands were being impacted from logging. DES personnel stated that they were unable to conduct an immediate site inspection due to high workload volume and time constraints.
7. On July 15, 2005, the NH Department of Resources and Economic Development, Division of Forests and Lands, ("DRED") issued an Official Notice to William Holmes. The Official Notice cited William Holmes for "Surface runoff resulting in erosion of exposed soil. No siltation control devices installed. Install silt fence/hay bales to control erosion of landing. Comply with BMPs [best management practices] for erosion control."
8. On April 11, 2005, a public hearing was held by the Town of Sutton regarding a proposed subdivision for the Property, filed by Begin Homes, LLC. After hearing public comment, including concerns over logging in wetlands, the Sutton Planning Board voted to table the application.
9. On May 4, 2006, DES received a written complaint alleging that wetlands had been impacted during logging. The written complaint included a partial copy of the subdivision plan and included a wetland delineation.
10. On June 22, 2006, DES personnel conducted an inspection of the Property and observed or found the following:
 - a. The Property is approximately 12 acres, located on a slope, which in places exceeds 20%. At the base of the slope is Thistle Brook, a perennial stream that runs through the Property;
 - b. The silt fence and hay bales that had been installed pursuant to DRED's Official Notice were laden with sediment, overburdened and overtopped with sediment. Sediment was entering a forested wetland adjacent to Thistle Brook; and
 - c. Three drainages convey water downslope. The drainages were flagged as jurisdictional wetland. The drainages had been logged; water was flowing over exposed soils, creating gullies within the channel.
11. DES records show that a Notification of Forest Management or Timber Harvest Activities Having Minimum Wetlands Impact had not been filed for the Property.

D. DETERMINATION OF VIOLATIONS

1. The Responsible Parties have violated Env-Wt 304.06(a) by failing to maintain erosion control devices adjacent to wetlands and adjacent to Thistle Brook.
2. The Responsible Parties have violated Env-Wt 304.06(b) by failing to install adequate erosion controls for the size and nature of the logging operation, and the physical characteristics of the site necessary to protect water quality.

F. APPEAL

Any person aggrieved by this Order may request that DES reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Env-Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

3. The Responsible Parties have violated Env-Wt 304.05 by failing to comply with *Best Management Practices for Erosion Control on Timber Harvest Operations in New Hampshire*, ("BMPs") specifically by failing to install crossing devices such as corduroy, or mats while crossing a forested wetland in at least three separate areas. This failure to install proper crossing devices resulted in rutted and dredged wetlands.

4. The Responsible Parties have violated RSA 482-A:3 by causing fill in the form of sediment deposition to enter approximately 3,000 square feet of forested wetland without a permit from DES.

5. The Responsible Parties have violated RSA 482-A:3 by crossing wetlands and surface waters without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders the Responsible Parties as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.
2. **By September 15, 2006**, submit to DES for approval an erosion and sediment control plan for the Property. The erosion and sediment control plan shall be prepared by a certified wetland scientist and include:
 - a. Existing conditions and land topography, with dimensions drawn to scale, including the delineated footprint of all wetlands, streams, ponds, and jurisdictional runoffs on the Property.
 - b. A detailed proposed means of sediment and erosion control (silt fence, haybales, matings, etc.);
 - c. A proposed schedule, restoration, and construction sequence listing equipment and methods for accomplishing restoration as well as an anticipated restoration compliance date; and
 - d. A detailed proposed planting plan for the reestablishment, stabilization, and re-vegetation of the restoration areas.
3. Retain a certified wetland scientist to supervise the implementation of the restoration and to submit the restoration progress reports prepared in accordance with Item E.2 above.
4. Implement the erosion and sediment control plan proposed in accordance with Item E.2, above only after receiving written approval from, and as conditioned by, DES.
5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Linda Magoon, Compliance Specialist
DES Water Division
29 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: lmagoon@des.state.nh.us